Supreme Court, U.S.
FILED
OCT 14 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-179 and No. 86-401

In The

Supreme Court of the United States

October Term, 1986

THE CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, *et al.*,

Appellants,

UNITED STATES OF AMERICA,

Intervenor,

v.

CHRISTINE J. AMOS, *et al.*,

Appellees.

On Appeal from the United States District Court for the District of Utah

BRIEF OF THE GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS AS AMICUS CURIAE IN SUPPORT OF THE JURISDICTIONAL STATEMENTS

MELVIN B. SABEY
KRIS ORDELHEIDE
SAUNDERS, SNYDER, ROSS & DICKSON, P.C.
303 East Seventeenth Avenue
Suite 600
Denver, Colorado 80203
Telephone: (303) 861-8200

WARREN L. JOHNS
WALTER E. CARSON
RICHARD W. JOHNS
JOHNS AND CARSON
6840 Eastern Avenue, N.W.
Suite 629
Washington, D.C. 20012
Telephone: (202) 722-6320

Counsel for Amicus Curiae

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
or call collect (402) 342-2831

QUESTION PRESENTED

Whether Congressional amendment of the Civil Rights Act exempting the activities of religious organizations from the statutory prohibition against religious discrimination in employment is constitutional only as applied to religious activities; thus necessitating administrative and judicial determination regarding which activities of religious organizations are truly religious in nature?

TABLE OF CONTENTS

	Page
INTEREST OF AMICUS CURIAE	2
THE QUESTION IS SUBSTANTIAL	4
CONCLUSION	7

TABLE OF AUTHORITIES

Cases:

National Labor Relations Board v. Catholic Bishop of Chicago, 440 U.S. 490 (1979) 5

Porter Memorial Hospital v. United States of America, Equal Employment Opportunity Commission, Civ. No. 86-A-1229, United States District Court for the District of Colorado (filed June 18, 1986) 3

Other Authorities:

Civil Rights Act of 1964, Title VII, 42 U.S.C. 2000e *et seq.*, § 702 ..... 3, 4, 6

No. 86-179 and No. 86-401

In The

Supreme Court of the United States

October Term, 1986

THE CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, *et al.*,

Appellants,

UNITED STATES OF AMERICA,

Intervenor,

v.

CHRISTINE J. AMOS, *et al.*,

Appellees.

On Appeal from the United States District Court for the District of Utah

BRIEF OF THE GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS AS AMICUS CURIAE IN SUPPORT OF THE JURISDICTIONAL STATEMENTS*

In accordance with this Court's Rule 36, the General Conference of Seventh-day Adventists respectfully sub-

* Letters from all parties consenting to the filing of this Brief have been filed with the Clerk of this Court.

mits this Brief as Amicus Curiae in support of the jurisdictional statements filed by the Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints in Case No. 86-179 and by the United States of America in Case No. 86-401.

INTEREST OF AMICUS CURIAE

The world-wide governing body of the Seventh-day Adventist Church is the General Conference of Seventh-day Adventists, which is located in Washington, D.C. Because of the Church's strong doctrinal emphasis on healthful living, the ecclesiastical umbrella of the General Conference includes the Church's Department of Health and its world-wide health care system, which are jointly charged with the duty to disseminate the Church's beliefs regarding health and to administer to the health care needs of the world. Within the Adventist Health System in the United States there are approximately 150 hospitals, nursing homes and other health care organizations which collectively employ well over 50,000 employees.

Adventist Health System/United States is a nonprofit corporation organized by the Seventh-day Adventist Church to help carry forward the health message of the Church, "to make man whole." The Articles of Incorporation of the Adventist Health System/United States declare that the "specific purpose of this corporation is to preserve the mission of the Seventh-day Adventist Church as it pertains to its health ministry." The relationship between the Church's doctrine and its operation of health care institutions is set forth in the Church's Statement of Philosophy for Health Care Institutions and Services.

That Statement summarizes the Church's doctrines and principles regarding health care as follows:

> "In summary, the Adventist health-care institution is a corporate extension of Christ's life and mission and is the Seventh-day Adventist Church fulfilling its health and healing ministry. It is therefore indivisible from the church's total ministry in carrying the gospel to all the world."

In this context, the staffing of Seventh-day Adventist hospitals is of vital concern to the Church. The Statement of Philosophy evidences that concern. Although it affirms the Church's commitment to avoid discrimination on the basis of race, ethnic background, or sex, it firmly asserts the right to make employment decisions on the basis of religion:

> "The freedom to hire persons whose lives conform to this philosophy is fundamental to the achievement of the objectives of the Church."

Section 702 of the Civil Rights Act, as amended in 1972, confirms that freedom. Most importantly, it does so without resort to investigation and inquiry regarding the religious versus secular nature of the activity of a religious organization. Since the District Court below declared the exemption of Section 702 to be unconstitutional to the extent that it applies to secular activities of a religious organization, the Seventh-day Adventist Church and all of its health care institutions within the United States are intensely interested in the outcome of this litigation. Porter Memorial Hospital, a hospital within the Adventist Health System/United States, has particular interest in this case inasmuch as it is currently involved in litigation which addresses the same issue. *Porter Memorial Hospital v. United States of America, Equal Employment Opportunity Commission*, Civ. No. 86-A-1229, United States District Court for the District of Colorado (filed June 18, 1986).

THE QUESTION IS SUBSTANTIAL

The question presented in this case is substantial and must be reviewed by this Court. This Court's decision will have a far-reaching impact upon nearly every religious organization in this country. Prior to the 1972 Amendment of Title VII, the nation's churches operated under the cloud of threatened government investigation, interrogation, and prosecution arising out of employment policies and practices which furthered their religious objectives. That cloud was created by the limitation of the exemption for religious organizations to employment connected with "religious" activities. Thus, the Equal Employment Opportunity Commission was required to investigate, interrogate, and reach prosecution decisions which hinged upon a determination of the religious versus secular nature of activities of a religious organization. Similarly, the federal judiciary was required to adjudicate those sensitive questions of religious belief and activity. The cloud of government oversight of religious organizations undoubtedly had a chilling effect upon their willingness to exercise the "freedom to hire persons whose lives conform to [their] philosophy [which] is fundamental to the achievement of the objectives of the Church." *See,* Statement of Philosophy cited above.

The 1972 Amendment of Section 702 was a studied revision of the Act—studied in the laboratory of eight years' experience of government entanglement with religion. Both the clear import of congressional removal of the modifier "religious" preceding the term "activities" in Section 702 and the legislative history confirm the unmistakable intent of Congress to exempt religious organizations from scrutiny for religious discrimination in *all*

their activities. That amendment was necessary both to prevent government entanglement with religion and to permit the free exercise of religion.

By its decision below, the District Court has once again cast a cloud of uncertainty over the employment decisions of religious organizations. It has, once again, opened the door to government entanglement in religious issues. This Court has recognized the constitutional infirmity of a parallel situation. In *National Labor Relations Board v. Catholic Bishop of Chicago,* 440 U.S. 490 (1979), the Court addressed a similar issue in the context of NLRB assertion of jurisdiction over schools associated with the Catholic Church. NLRB policy "was to decline jurisdiction over religiously sponsored organizations 'only when they are completely religious, not just religiously associated.'" *Id.* at 493 (citation omitted). Having found that the schools were merely religiously associated, the NLRB asserted jurisdiction. In that setting, this Court made "a narrow inquiry whether the exercise of the Board's jurisdiction presents a significant risk that the First Amendment will be infringed." *Id.* at 502. In response to the Board's assertion that it could avoid entanglement since it would resolve only factual issues, this Court stated:

> "Moreover, it is already clear that the Board's actions will go beyond resolving factual issues. The Court of Appeals' opinion refers to charges of unfair labor practices filed against religious schools. 559 F2d, at 1125, 1126. The court observed that in those cases the schools had responded that their challenged actions were mandated by their religious creeds. The resolution of such charges by the Board, in many instances, will necessarily involve inquiry into the good faith

> of the position asserted by the clergy-administrators and its relationship to the school's religious mission. It is not only the conclusions that may be reached by the Board which may impinge on rights guaranteed by the Religion Clauses, but the very process of inquiry leading to findings and conclusions.

Id.

The declaration in this case by the Court below that Section 702 is unconstitutional insofar as it applies to secular activities of religious organizations invites the same type of government entanglement in Civil Rights Act cases which this Court prevented in the handling of claims under the National Labor Relations Act. Neither the Equal Employment Opportunity Commission nor the federal courts should be involved in drawing the line between the religious and secular activities of a religious organization. Much less should either body be permitted to deny an exemption to a religious organization on the ground that an activity claimed to be religious is, in fact, merely secular in nature.

———o———

CONCLUSION

Congress carefully balanced the First Amendment considerations when it amended Section 702 in 1972. The Court below has upset that balance by declaring the amendment unconstitutional. The Court should note probable jurisdiction and restore the balance which was carefully fashioned by Congress.

OCTOBER 8, 1986.

Respectfully submitted,

MELVIN B. SABEY
KRIS ORDELHEIDE
SAUNDERS, SNYDER, ROSS
& DICKSON, P.C.

WARREN L. JOHNS
WALTER E. CARSON
RICHARD W. JOHNS
JOHNS AND CARSON

Counsel for Amicus Curiae